

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

IN RE:)
)
RCP Investments VII, LLC,) Case No. 11-81358C-11D
)
Debtor.)

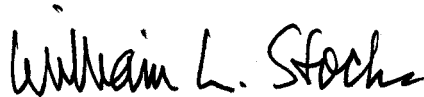
OPINION AND ORDER

The matter before the court is a proposed consent order which was submitted regarding objections to a proof of claim that was filed by Standard Insurance Company. The claim was filed as a secured claim, is in the amount of \$501,553.78 and includes \$65,420.06 which is designated as "Legal fees (15%)". The Debtor and TD Bank, NA, another creditor, have objected to the \$65,420.06 included in the proof of claim as legal fees. The order submitted by the parties provides that the objections are to be sustained but that "Standard's claim will be allowed to be amended to include the amount of its actual attorney's fees incurred with respect to its efforts to collect on the indebtedness owed to it by the Debtor." The problem with the proposed order is the foregoing quoted language. Standard's claim for attorney's fees is based upon section 506(b) of the Bankruptcy Code. Creditors who seek to recover attorney's fees pursuant to section 506(b) are required to file and serve a fee application that complies with the requirements of Rule 2016 of the Federal Rules of Bankruptcy Procedure rather than including the requested fees in a proof of claim. See In re Jack Kline Co., Inc., 440 B.R. 712, 718 (Bankr.

S.D. Tex. 2010); Sanchez v. Ameriquest Mortg. Co. (In re Sanchez), 372 B.R. 289, 303 (Bankr. S.D. Tex. 2007); Tate v. NationsBanc Mortgage Corp. (In re Tate), 253 B.R. 653, 665 (Bankr. W.D.N.C. 2000); Matter of Lane Poultry of Carolina, Inc., 63 B.R. 745 (Bankr. M.D.N.C. 1986). The proposed order therefore is disapproved to the extent that it provides for Standard's claim for attorney's fees to be included in an amended proof of claim. The court will accept a revised order that sustains the objections without prejudice to Standard filing an application for allowance of attorney's fees that complies with the requirements of Rule 2016.

IT IS SO ORDERED.

This 17th day of October, 2012.



WILLIAM L. STOCKS
United States Bankruptcy Judge